IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 357 of 2007
in
Writ Petition No. 4603 of 1993

The National Rayon Corporation Ltd. ..Applicants

vs.

The State of Maharashtra ..Respondent

Shri V.A.Thorat, Sr.Counsel with Smt.Shobha Gopal, Mr.Levi Rubene and Mr.Sujit S.i/b M/s Vigil Juris for applicants.
Shri R.M.Patne, A.G.P. for respondent State.

CORAM: S.B.MHASE &
Smt.NISHITA MHATRE JJ.
21st February, 2007

P.C.

1. Heard.

2. This is a restoration application to restore the writ petition. Writ Petition No.4603 of 1993 was dismissed for non prosecution on 18th October, 2001 by the Division Bench consisting of V.G.Palshikar and S.J.Vazifdar JJ. since no one appeared for the petitioners. Shri Thorat, Sr.Counsel appearing for the applicants states that dispute was about the dues to be charge on generating electricity and, therefore, subject matter of the petition was not infructuous and/or the petitioner was not rendered

infructuous by efflux of time. He further submitted that the mistake was of the attorney of the firm which was appearing for the petitioners but the petitioner was not at fault and on getting information about dismissal of the petition the petitioners have immediately approached the Advocates and within 30 days from the date of their knowledge have filed the application and prayed for restoration of the petition.

3. Shri Patne, learned A.G.P. for the State vehemently opposed for restoration of the petition. He submitted that there is a delay of 1943 days and thus the delay is inordinate and, therefore, the matter shall not be restored.

4. We have perused the matter and submissions of Shri Thorat. What we find that the subject matter of the writ petition survives as of today also and if the petition is disposed of the applicants will be put to irreparable loss. We alsos find that after getting the information within 30 days the application has been preferred. The fault was of the attorney of the firm. Therefore, even though prima

facie it appears that there is a delay of 1943 days actually from the date of knowledge there is no delay. We are inclined to allow the civil application. We, therefore, allow the Civil Application in terms of prayer clauses (a) and (b) and fix the matter peremptorily for final hearing on 2nd April, 2007.

5. Civil Application is disposed of.

(Smt.NISHITA MHATRE J.) **(S.B.MHASE J.)**